

¹ 5 U.S.C. § 8101 *et seq.*

Appellant stopped work on January 14, 2019. On that date, she underwent OWCP authorized arthroscopic surgery, chondroplasty of the patella and medial femoral condyle, and partial medial meniscectomy of her left knee.

On November 7, 2019 appellant requested OWCP authorization for platelet plasma injections.

In a letter dated November 19, 2019, Dr. Ronan Cahill, a physician Board-certified in family practice and sports medicine, noted that a recent magnetic resonance imaging (MRI) scan of appellant's left knee demonstrated persistent lateral meniscal tearing for which he recommended platelet plasma injections as treatment.

In a letter dated December 11, 2019, Dr. Cahill observed that three surgeons had already agreed that attempting another surgery of her left knee was not recommended, as the lateral compartment was too restricted for successful surgery. He noted that surgery was not the only option, as platelet rich plasma injections had a realistic chance of providing significant functional improvement and allowing her to return to her date-of-injury position.

On January 21, 2020 OWCP referred the medical evidence of record, along with a statement of accepted facts (SOAF), to Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as district medical adviser (DMA) for review. It requested that he opine as to the medical necessity of the proposed platelet plasma injection treatment.

In a report dated February 4, 2020, Dr. Hammel reviewed the SOAF and medical records, and opined that the proposed platelet rich plasma injection treatment was causally related to the accepted condition, but not medically necessary, as evidence did not indicate that it was superior over other techniques for treating a meniscus tear. He noted that Dr. Cahill had not addressed any reason why open surgical treatment was not an option.

By decision dated March 3, 2020, OWCP denied authorization for medical treatment of platelet plasma injections.

OWCP continued to receive medical evidence. In a report dated June 8, 2020, Dr. Kevin Conley, a family medicine specialist, administered a corticosteroid injection. He noted that surgery was not a good option given previous recommendations against surgery by her original surgeon. Dr. Conley recommended consideration of platelet rich plasma injections.

On December 17, 2019 and August 17, 2020 appellant underwent platelet rich plasma injections of the left knee with Dr. Cahill.

On March 8, 2021 appellant requested reconsideration of its March 3, 2020 decision. With her reconsideration request, she submitted a statement dated January 29, 2021 in which she argued that she had submitted sufficient medical evidence demonstrating that her platelet rich plasma injections had been successful and had enabled her to return to full duty in her date-of-injury position. On the same date, OWCP received the results of diagnostic tests of the left knee dated February 19, March 4, June 8, and October 5 2020 and January 5, 2021. It also received physical evidence in the form of two compact discs, which appellant indicated contained ultrasound images of her left knee. In a letter dated February 1, 2021, Dr. Cahill noted that appellant had undergone

platelet rich plasma injections and noted that she had significant improvement in both pain and function, as she had returned to work at full capacity. He stated that the platelet rich plasma injections had been very successful in managing and improving appellant's disability secondary to meniscal tearing, especially in the setting of poor surgical options.

By decision dated March 22, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

LEGAL PRECEDENT

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.² This discretionary authority, however, is subject to certain restrictions. For instance, a request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.³ Timeliness is determined by the document receipt date, *i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS).⁴ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁵

When a request for reconsideration is untimely, OWCP undertakes a limited review to determine whether the request demonstrates clear evidence that OWCP's most recent merit decision was in error.⁶ Its procedures provide that it will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607, if the claimant's request for reconsideration demonstrates "clear evidence of error" on the part of OWCP.⁷ In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.⁸

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.⁹ The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error. Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate

² 5 U.S.C. § 8128(a); *see T.J.*, Docket No. 21-0586 (issued September 30, 2021); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

³ 20 C.F.R. § 10.607(a).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

⁵ *G.G.*, Docket No. 18-1072 (issued January 7, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁶ *See* 20 C.F.R. § 10.607(b); *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499 (1990).

⁷ *L.C.*, Docket No. 18-1407 (issued February 14, 2019); *M.L.*, Docket No. 09-0956 (issued April 15, 2010). *See also* 20 C.F.R. § 10.607(b); *supra* note 4 at Chapter 2.1602.5 (September 2020).

⁸ *J.M.*, Docket No. 19-1842 (issued April 23, 2020); *Robert G. Burns*, 57 ECAB 657 (2006).

⁹ *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 4 at Chapter 2.1602.5a (September 2020).

clear evidence of error. It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion. This entails a limited review by OWCP of how the evidence submitted with the reconsideration request bears on the evidence previously of record and whether the new evidence demonstrates clear error on the part of OWCP. To demonstrate clear evidence of error, the evidence submitted must be of sufficient probative value to shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision.¹⁰

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard. The claimant must present evidence which on its face demonstrates that OWCP made an error. Evidence such as a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error.¹¹ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹²

ANALYSIS

The Board finds that OWCP properly determined that appellant's request for reconsideration was untimely filed.

The last merit decision was dated March 3, 2020. As appellant's request for reconsideration was not received by OWCP until March 8, 2021, more than one year after March 3, 2020, pursuant to 20 C.F.R. § 10.607(a), the request for reconsideration was untimely filed. Consequently, appellant must demonstrate clear evidence of error by OWCP in denying the claim.¹³

The Board further finds that OWCP summarily denied appellant's request for reconsideration without complying with the review requirement of FECA and its implementing regulations.¹⁴ Section 8124(a) of FECA (5 U.S.C. § 8124(a)) provides that OWCP shall determine and make findings of fact and make an award for or against payment of compensation. Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons. As well, OWCP's procedures provide that the

¹⁰ *C.M.*, Docket No. 19-1211 (issued August 5, 2020).

¹¹ *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 4 at Chapter 2.1602.5(a) (September 2020).

¹² *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

¹³ 20 C.F.R. § 10.607(b); *S.C.*, Docket No. 20-1537 (issued April 14, 2021); *R.T.*, Docket No. 19-0604 (issued September 13, 2019); *see Debra McDavid*, 57 ECAB 149 (2005).

¹⁴ *See Order Remanding Case, W.D.*, Docket No. 20-0859 (issued November 20, 2020); *Order Remanding Case, C.G.*, Docket No. 20-0051 (issued June 29, 2020); *Order Remanding Case, T.P.*, Docket No. 19-1533 (issued April 30, 2020); *see also* 20 C.F.R. § 10.607(b).

reasoning behind OWCP's decision should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence, which would overcome it.¹⁵

In its March 22, 2021 decision, OWCP did not discharge its responsibility to set forth findings of fact and a clear statement of reasons explaining the disposition so that appellant could understand the basis for the decision.¹⁶ It did not make any findings regarding the evidence submitted in support of the reconsideration request.¹⁷ OWCP summarily denied appellant's request for reconsideration without complying with the review requirements of FECA and its implementing regulations.¹⁸ Its failure to provide factual findings and explain the basis for its conclusion that appellant did not demonstrate clear evidence of error precludes the Board's review of the decision.¹⁹

The Board will set aside OWCP's March 22, 2021 decision and remand the case for an appropriate decision on appellant's untimely reconsideration request.

CONCLUSION

The Board finds that appellant's request for reconsideration was untimely filed. The Board further finds that the case is not in posture for decision regarding whether appellant has demonstrated clear evidence of error.

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

¹⁶ 20 C.F.R. § 10.126; *D.W.*, Docket No. 18-0483 (issued March 7, 2019).

¹⁷ *See C.R.*, Docket No. 17-0964 (issued September 9, 2019).

¹⁸ *Id.*

¹⁹ *See Order Remanding Case*, Docket No. 19-1533 (issued April 30, 2020).

ORDER

IT IS HEREBY ORDERED THAT the March 22, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for action consistent with this decision of the Board.

Issued: April 4, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board